Crl.A.No.723 of 2001

The Second Appellant/Accused No.2 Viz, Jayalakshmi @ Jaya was directed to be released on bail by the order of this court dated 14.8.2001 and made in Crl.Mp.No.5352/01 in Crl.A.No.723/01

The First Appellant/accused No.1 Viz, Selvaraj was directed to be released on bail by the order of this Court dated 19.9.2001 and made in Crl.Mp.No.5352/01 in Crl.A.No.723/01

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 27-04-2007

CORAM

THE HONOURABLE MR.JUSTICE S.TAMILVANAN

CRIMINAL APPEAL No.723 of 2001

1. Selvaraj
2. Jayalakshmi ... Appellants/Accused 1 & 2

-vs-

State rep by
Assistant Commissioner of Police
Law & Order,
Kilpauk Range,
Chennai. ... Respondent/Complainant

Criminal Appeal filed against the Judgment of conviction, dated 26.07.2001, made in S.C.No.269 of 1999 on the file of the II Additional Sessions Judge, Chennai.

For appellants : Mr.S.Shanmugavelayutham, Senior Counsel for Mr.R.Anand

For respondent : Mr.Hasan Mohamed Jinnah Govt. Advocate (crl. side)

J U D G M E N T

This Criminal Appeal has been preferred by the appellants / accused challenging the judgment of conviction, dated 26.07.2001, made in S.C.No.269 of 1999 on the file of the II Additional Sessions Judge, Chennai, whereby the appellants 1 and 2 were found guilty of the offence

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punishable under Sections 498A IPC and sentenced each of them to undergo one year RI and to pay a fine of Rs.5,000/- each with default sentence. Further, the first appellant / A1 was found guilty under Section 304 B IPC and sentenced to undergo RI for 10 years and to pay a fine of Rs.10,000/- with default sentence. The sentence imposed on the first appellant was ordered to run concurrently.

2. The brief facts of the prosecution case are as follows :

The deceased Sowmya was the wife of the first appellant / A1. The first appellant / A1 is the son of the second appellant / A2. The first appellant and the deceased Sowmya were leading their matrimonial life at No.2, Karukathamman Koil Street, Chetpet, Chennai, and a child was also born to them. As per the prosecution case, the appellants were causing cruelty on the deceased continuously by demanding dowry. As per the complaint, Ex.P.1, the first appellant / A1 had demanded Rs.10,000/- and caused cruelty even while she was in family way. Accordingly, the amount of Rs.10,000/- was given to the first appellant by the parents of Sowmya, in addition to the jewels and amount Rs.10,000/- already given during the marriage of the deceased and the first appellant. According to P.W.1, the mother of the deceased, even after the birth of the child, the first appellant / A1 was causing cruelty by beating the deceased, hence, she was in the house of her parents for about 11 months, even after the birth of the child. Subsequently, the first appellant, his younger brothers and others came to the house of P.W.1 and gave assurance that the deceased Sowmya would not be subject to cruelty. On the assurance, P.W.1 sent her daughter, the deceased with the child, but the first appellant / A1 was not satisfied with the jewels presented by the parents of Sowmya for the child. Subsequently, P.W.1 and her brothers went to the house of the appellants / accused and due to the ill treatment and cruelty met out by the deceased Sowmya there, she was brought to the house of her parents and again at the instance of the appellants, she could see the face of f the elders, P.W.1 sent the deceased with the child to the house of the appellants. Subsequently, when she went to the house of the appellants, she could see the face of the deceased found swollen due to beating, but Sowmya did not say the reason, as she was scared of the appellants. On 05.10.1998 at about 7 p.m, brother of the first appellant, Kumar came to the house of P.W.1 in a van and informed that Sowmya was dead due to cholera and the dead body was kept at the Kilpauk Government Hospital. She went to Hospital and found the dead body of Sowmya with ligature mark on the neck. Then, she gave the complaint, Ex.P.1 before the respondent police against the appellant / accused 1 and 2 that her daughter, the deceased had been subjected to cruelty and done to death.

3. It is seen that P.W.2, Parasuraman, the father of the deceased, P.W.3, brother of the deceased have also deposed similar evidence on the same line of the evidence adduced by P.W.1. According to P.W.4, an independent witness, she found the deceased hanging at the house of the appellants / accused, at about 3 p.m, on the date of occurrence, but subsequently, she turned hostile. Hence, she was cross-examined by the Government Advocate. As per the evidence of P.W.5, the doctor who

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conducted postmortem on the dead body of the deceased Sowmya, the following injuries were found :

> "An incomplete, oblique, dark brown, ligature abrasion on the front and sides of the neck. 29 x 2 cms below the level of thyroid cartilage. The ligature abrasion 9 cms below the chin and 8 cms above the suprasternal on front of the neck. The ligature abrasion is 6 cms and 4 cms below the right and left mastoid process on the sides of the neck. On the base of the neck, the ligature abrasion merges with the hair line. On dissection the base of ligature abrasion is pale and dry. The subcutaneous soft tissues of the neck are pale. The hyoid bone and other laryngeal cartilages are intact."

The Doctor has opined that the deceased would appear to have died of asphyxia due to hanging. It is seen that the medical evidence supports the prosecution case that the death of Sowmya occurred otherwise than under normal circumstances.

4. Mr.S.Shanmughavelayutham, learned Senior Counsel appearing for the appellant / accused would contend that the prosecution has not established the guilt against the accused beyond reasonable doubt. According to him, P.Ws.1 to 3 are the parents and the brother of the deceased and as such they are interested witnesses, hence, it could not be construed that the guilt against the first appellant under Sections 498A and 304 B IPC and the guilt against the second appellant under Section 498A have been proved.

5. Per contra, Mr.Hasan Mohamed Jinnah, learned Government Advocate (crl.side) submits that there is sufficient evidence to record that there was dowry harassment and also the cruelty caused on the deceased by demanding dowry and therefore, as per Section 113 of Indian Evidence Act, the trial court has rightly drawn the presumption that the deceased died due to dowry death and therefore, there is no error in the judgment of the trial court to be interfered with.

6. The Hon'ble Supreme Court in the decision, T.Aruntperjunjothi vs. State, reported in (2006) 2 SCC (Cri) 528, has held the following essential ingredients for convicting the accused under Section 304B IPC. As per the ruling, (i) death of a woman must have been caused by any burns or bodily injury or otherwise than under normal circumstances; (ii) such death must have occurred within seven years of marriage; (iii) soon before her death she was subjected to cruelty or harassment by her husband or relative of her husband; (iv) such cruelty or harassment must be in connection with the demand of dowry; and (v) such cruelty is shown to have been meted out to the woman soon before her death.

7. In the instant case, it is not in dispute that the deceased Sowmya died within 7 years after her marriage, with the first appellant / A1. The death was also not under normal circumstance. The younger brother of the

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first appellant and the son of the second appellant, who was examined as P.W.9, Gunasekaran has deposed that on the date of occurrence between 3 p.m and 4.30 p.m, on information, he went and saw the dead body of Sowmya was hanging in the house of the appellants and the saree knot used for hanging was released by himself and others, but on the advice of the others, the death was informed to the police only at 9 p.m, on the date of occurrence. Another brother of the first appellant, Kumarasamy, who was examined as D.W.1 has deposed that on the date of occurrence, he proceeded to the village of P.W.1 and P.W.2 by taxi and informed about the death of Sowmya and the taxi bill has been marked as Ex.D.3. He has admitted that the first wife of the first appellant died due to blast of a stove. He has admitted that the parents of the deceased Sowmya had given a gift of 5 sovereign gold to the first appellant during marriage, but denied the alleged dowry amount of Rs.10,000/- paid by them. He has stated that Sowmya was very poor and her parents were living in hut and she was married by A1, with an intention of looking after the daughter born through the first wife of the appellant. Had the parents of the deceased were very poor, they could not have offered 5 sovereigns of gold to the first appellant on the date of marriage as admitted by him.

8. According to P.W.9, the deceased was found hanging in the house of the appellants between 3 p.m and 4.30 p.m, but there is no reason, why there was a delay in intimating the occurrence to the police. P.W.1 has deposed that on 05.10.1998, the brother of the first appellant came to her house in a car and informed that Sowmya died due to cholera and the dead body was kept at Kilpauk Government Hospital. The said incorrect information given to the parents of the deceased by D.W.1 about the cause of death has not been rebetted by the appellants, while they were questioned under Section 313 Cr.P.C.

9. In the decision Trimukh Maroti Kirkan vs. Stateof Maharashtra, reported in 2007 Crl.L.J. 20, the Hon'ble Supreme Court has held thus "The demand for dowry or money from the parents of the bride has shown a phenomenal increase in last few years. Cases are frequently coming before the Courts, where the husband or in-laws have gone to the extent of killing the bride if the demand is not met. These crimes are generally committed in complete secrecy inside the house and it becomes very difficult for the prosecution to lead evidence. No member of the family, even if he is a witness of the crime, would come forward to depose against another family member. The neighbours, whose evidence may be of some assistance, are generally reluctant to depose in Court as they want to keep aloof and do not want to antagonize a neighbourhood family. The parents or other family members of the bride being away from the scene of commission of crime are not in a position to give direct evidence which may inculpate the real accused except regarding the demand of money or dowry and harassment caused to the bride. But, it does not mean that a crime committed in secrecy or inside the house should go unpunished."

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10. As found by the Hon'ble Apex Court, it is very difficult for the prosecution to lead evidence, as the crime relating to dowry death are generally committed in complete secrecy inside the house and no member of the family, even if he is witness to the crime, would come forward to depose evidence against other family member.

11. Here in the instant case, Sowmya, the wife of the first appellant had died of hanging and hence, it is not a death under normal circumstance. The death had taken place at the residence of the appellants, admittedly during day time between 3 p.m, and 4.30 p.m. In the 313 questioning the appellants have simply denied the incriminating evidence of the prosecution against them as false. They have not even stated as to what was the reason for Sowmya, the wife of the first appellant for committing suicide by hanging at his residence between 3 p.m, and 4.30 p.m.

12. Apart from P.W.1 to P.W.3, P.W.8 and P.W.12 have also deposed that there was dowry harassment. The appellants have not denied the earlier panchayat and she was taken to appellant.s house only 9 months after the birth of the child. Merely, on the ground that the witnesses are close relatives, their evidence need not be discarded, but the Court has to scrutinize their evidence with due care. Here in this case, the independent witness, P.W.4 is a tenant in the house of the appellants and P.W.7, one of the mahazar witnesses turned hostile. The trial court, considering the evidence of P.W.1 to P.W.3 and other witnesses, has found that there was a dowry harassment.

13. As per the decision, Sham lal vs. State of Haryana, reported in 1997 SCC (Cri) 759, to draw the presumption of dowry death, under Section 113 B of Evidence Act, it is imperative to prove that soon before her death, the wife was subjected to cruelty and harassment for or in connection with the demand for dowry.

14. As per the evidence of P.W.1, when she went to the house of the appellants, few days prior to the date of death, she found her daughter.s face swelling due to beating and the deceased could not say the reason, as she was scared of the first appellant. The evidence of P.W.8 also corroborates the same. On the facts and circumstances, I am of the considered view that the court can draw the inference under Section 113 B of Indian Evidence Act, since offence under Section 304 B IPC has been made out.

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15. Section 113 B of Indian Evidence Act reads as follows :

113-B Presumption as to dowry death : - When the question is whether the person has caused the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

16. Therefore, contrary to presumption under Section 113 B of Evidence Act, has to be established by the accused. In the normal circumstances, there can be no possibility for the deceased to commit suicide, leaving her 1 ½ year old baby. There is no satisfactory explanation or defence as to why the deceased committed suicide and that too during day time at the residence of the appellants. The silence of the first appellant / A1 would draw the inference that he was a cause of her death. Therefore, I could find no error or infirmity in the view taken by the court below, so fare as the first appellant / A1 is concerned in convicting him under Sections 498A and 304 B IPC.

17. As far as the second appellant / A2 is concerned, there is no direct evidence available on record against her with regard to demand of dowry and she was aged above 60 years on the date of occurrence. Hence, I am of the considered view that the guilt against the second appellant / A2, under Section 498A IPC has not been proved beyond reasonable doubt, and to meet the ends of justice, I find it reasonable to give benefit of doubt to the second appellant / A2 and found her not guilty under Section 498A IPC.

18. In the result, confirming the conviction and sentence imposed by the court below, the appeal so far as it relates to the first appellant / A1 is dismissed. So far as it relates to the second appellant / A2 is concerned, the appeal is allowed and the conviction and sentence, imposed on her by the court below is set aside.

19. As the first appellant / A1 is on bail, the trial court is directed to secure the first appellant / A1 to under go the remaining period of sentence. The fine amount, if any paid by the second appellant / A2 shall be refunded to her forthwith and the bail bond, if any executed shall be discharged.

tsvn

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To

1. The II Additional Sessions Judge, Chennai.

2. Do-Thro' The Principal Sessions Judge, Chennai.

3. The Assistant Commissioner of Police
   Law & Order, Kilpauk Range,
   Chennai.

4. The Public Prosecutor
   High Court of Madras, Chennai.

5. The Superintendent, Central Prison, Vellore

6. The Director General of Police, Mylapore,
   Chennai - 4.

7. The District Collector, Chennai.

8. The XIV Metropolitan Magistrate,
   Egmore, Chennai-8.

9. Do-Thro'The Chief Metropolitan Magistrate,
   Egmore, Chennai-8.

+1 cc to R.Anand,Advocate Sr.No.31440.

NG(CO)
dcp/7.6.07 Crl.A.No.723 of 2001

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